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Sup. Ct. of Springer for Defts.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Nov. 17, 1900.

The State of Missouri,

COMPLAINANT,

vs.

The State of Illinois and the Sanitary District of Chicago,

DEFENDANTS.

SUPPLEMENTAL BRIEF

of authorities cited in argument, but not cited in other briefs of Defendants.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

THE STATE OF MISSOURI,
COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
DEFENDANTS.

Original.
No. 5.

SUPPLEMENTAL BRIEF OF AUTHORITIES CITED IN ARGUMENT, BUT NOT CITED IN OTHER BRIEFS OF DEFENDANTS.

At the oral argument of this case on the 13th day of November, 1900, it was suggested to counsel for defendants that the authorities cited in argument, but not in the briefs, should be printed for the use of the court.

The following cases were cited and quotations from the opinions therein were read in argument:

The case of the Attorney-General *v.* the Delaware and Bound Brook R.R. Co., 27th New Jersey Equity Reports, page 1, was cited by counsel for complainant in their brief, at bottom of page 14, but was not cited by counsel for defendants.

This case was adjudged in the Court of Chancery of New Jersey at February term, 1876. The information filed by the Attorney-General complains that the defendants were constructing a bridge across the Delaware river, and that they were guilty of purpresture, and that the structure was a nuisance. The Chancellor, Theodore Runyon, heard the complaint and submitted an exhaustive opinion in the case. He held that the defendants were not guilty of purpresture, that the bridge was not a nuisance, but a lawful structure, and refused to grant an injunction. The following was submitted as an additional reason for refusing the injunction :

"There is still another consideration constraining me to the conclusion at which I have arrived. The defendants have acted *bona fide* under what they believe to be sufficient legislative authority. They have expended a very large sum of money in their enterprise. It appears by the answer that the estimated cost of their railroad, including viaduct and right of way, is nearly two million of dollars, of which a million and a quarter have been actually paid on account of the work, and for the balance of the work, to cost nearly six hundred thousand dollars, contracts have been made on which they are liable. At the time of the filing the information, the North Pennsylvania Railroad Company had expended on their part of the enterprise nearly a million and a quarter of dollars, making an aggregate of expenditures, by them and the defendants, of about two million and a half, of which about three hundred and thirty-seven thousand dollars were expended on the viaduct alone. The information was not filed until nearly a year after the construction of the viaduct was commenced, and not until it and the road were almost completed, and no excuse is given for the delay. The State authorities must have been aware of the circumstances, of the great cost of the work, of its vital importance to the enterprises of which it was a part, and of the great expenditure made upon them. The locality

of the viaduct is near the capital of the State. The legislature has had its usual annual session of many weeks since the work on the viaduct begun. The work has been, from its commencement, a matter of public notoriety, and yet no action has been taken on the part of the State authorities, nor even any warning uttered by them against the work. The defendants have been permitted to make their immense expenditure upon their enterprise, in the confidence of their convictions that they possessed all requisite legislative authority, without even a word of protest or remonstrance. Under such circumstances, equity will refuse its aid, even to the State, leaving it to its remedy at law. Att'y-Gen. *v.* Heishon, 3 C. E. Green, 410; Scudder *v.* Trenton Del. Falls Co., Saxt. 694; Att'y-Gen. *v.* Johnson, 2 Wilson, C. R. 87; Att'y-Gen. *v.* Sheffield Gas Co., 3 D., M. & G. 304; Att'y-Gen. *v.* N. Y. & L. B. R.R. Co., 9 C. E. Green, 49; Att'y-Gen. *v.* Brown, 9 C. E. Green, 91; Kerr on Injunctions, 202–206; Joyce on Injunctions, 1264.

"In Attorney-General *v.* Johnson, which was a proceeding to restrain a purpresture in the river Thames, delay in the proceedings, on the part of those who sought the aid of the court, was recognized as a reason which would prevent the court from interposing, and induce it to leave them, as in other cases, to deal with it at law."

From the order of the chancellor, refusing the injunction and dismissing the information, the attorney-general appealed to the Court of Errors and Appeals of New Jersey, and on appeal the decree of the chancellor was unanimously affirmed. The opinion in the Court of Appeals was by Dixon, J., and it was concurred in by all the judges. The opinion held that there was lawful authority for the construction of the bridge in question, and that "the chancellor rightly refused the injunction asked for" (27 N. Jersey Eq., page 649.) The opinion of the appellate court makes no reference to that part of the chancellor's opinion quoted above. We have a right

to assume, however, that if the Court of Errors and Appeals had dissented from these views of the chancellor, reference would have been made to that fact. But, in any event, the authorities cited by Chancellor Runyon fully sustain him, as will be seen upon examination.

The case of the Mississippi & Missouri R.R. Co. *v.* Ward, 2 Black (U. S.) page 485, was cited, and the following quotations from the opinion of this court were read by counsel.

The quotations are from the syllabus:

"(7) A bill in equity to abate a nuisance is a local suit, and can be brought only in the district where the nuisance is situated.

"(11) If the obstruction to navigation complained of was created by piers erected on the Illinois side, that was an offence against the laws of Illinois, and neither a State court of Iowa proceeding by indictment, nor the Federal Court for the District sitting in equity can inquire into the facts or furnish a remedy.

"(14) In a suit for the abatement of a nuisance, a Court of Equity confining its inquiries within the limits of its local jurisdiction, must be governed by the same rules which a Court of Law would act upon in trying an indictment for the same nuisance.

"(16) Another rule is that the bridge must appear plainly to be a nuisance before it can be so decreed, since a Court of Equity, proceeding by bill, like a Criminal Court trying an indictment, must give the benefit of all reasonable doubts to the defendant."

The case was instituted by Ward against the Railroad Company in the United States District Court for the District of Iowa, and the bill prayed for an abatement of the Rock Island Bridge over the Mississippi river, averring it to be a public nuisance. This Court dismissed the bill.

(See also 27 Am. & Eng. Enc. of Law, 207; 13 Howard, 381, and 23 Ala. 673; 5 Gilman, 367, as to venue. These authorities were not cited heretofore.)

The case of the State of Wisconsin v. The St. Croix Boom Corporation, 60 Wisconsin, pages 568-9, was cited by counsel for defendants, and the following extract from the opinion of the Supreme Court of Wisconsin, was read in argument:

"The Bill charges, in substance, that the defendant corporation,—which was created and organized under the laws of the State of Minnesota, and all of whose officers are non-residents of this State,—has constructed and now maintains a system of booms, and large and permanent structures, of cribs of stone and heavy timber, above the head of lake St. Croix, upon and across the main channel of the St. Croix river, in the deep and navigable waters thereof, within the limits of this State, which booms and obstructions constitute a serious and permanent injury and obstruction to the navigation of the river by boats and water-crafts, to the entire suspension of all commerce and trade on the river. The relief asked is that the writ of injunction be issued from this court enjoining and restraining the defendant corporation, its officers, etc., from continuing and maintaining these booms, cribs and obstructions upon the St. Croix river, in the main channel thereof, or from otherwise obstructing the free use and navigation of the river, as far as the same is within the limits and jurisdiction of this State.

"These are the essential grounds or material facts upon which it is asked that this Court take original jurisdiction of this injunction bill, and hear and decide the cause upon its merits. The question is, Do they present a case calling for the exercise of such a jurisdiction? We are clearly of the opinion they do not. It will be borne in mind that while this Court decided in the Railroad and Eau Claire cases that it had, under the constitutional grant of power, original jurisdiction, on behalf of the State, of a suit in the nature of an injunction bill in chancery,

yet that the scope of this jurisdiction was restricted to a particular class of cases. Its original jurisdiction in that regard could not be measured by the jurisdiction over writs of injunction conferred upon the circuit courts, because those courts take the writs with unlimited jurisdiction over them. This whole subject is discussed in such a masterly and exhaustive manner by the Chief Justice in the above cases that we cannot do better than quote his language. In the Railroad case he says: 'Other original jurisdiction is prohibited to this Court, and the jurisdiction given by the writs is essentially a limited one. Those courts take the prerogative writs as part of their general jurisdiction with power to put them to all proper uses. This Court takes the prerogative writs for prerogative jurisdiction, with power to put them only to prerogative uses proper.' 35 Wis. 522. Again he says: 'It is not enough to put in motion the original jurisdiction of this Court that the question is *publici juris;* it should be a question *quod ad statum reipublicæ pertinet;* one affecting the sovereignty of the State, its franchises or prerogatives, or the liberties of its people.' 37 Wis. 442. * * * 'It would be straining and distorting the notion of prerogative jurisdiction to apply it to every case of personal, corporate, or local right, where a prerogative writ happens to afford an appropriate remedy. To warrant the assertion of original jurisdiction here, the interest of the State should be primary and proximate, not indirect or remote; peculiar, perhaps, to some subdivision of the State, but affecting the State at large in some of its prerogatives; raising a contingency requiring the interposition of this Court to preserve the prerogatives and franchises of the State in its sovereign character; this Court judging of the contingency in each case for itself. For all else, though raising questions *publici juris,* ordinary remedies and ordinary jurisdictions are adequate. And only when for some particular cause these are inadequate, will the original jurisdiction of this Court be exercised for the protection of merely private or merely local rights.'. 37 Wis. 444."

Attention of this Court is called to the full text of the opinion of the Supreme Court of Wisconsin in the St. Croix Boom case.

Counsel for the defendant cited in their brief, 98 Wis. 140, but made no quotation from it. The case cited is that of *In re Hartung*, in which the Supreme Court of Wisconsin held: "A mere public nuisance, even though an agravated one, cannot reasonably be said to affect the sovereignty, franchises or prerogatives of the State, or the liberties of its people. The Constitution of Wisconsin, Section 3, Article VII, which empowers the Supreme Court, 'to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari,' and other original and remedial writs, and 'to hear and determine the same'; was designed to give this Court original jurisdiction of all judicial questions affecting the sovereignty of the State, its franchises and prerogatives, or the liberties of its people. The Attorney-General *v.* The Chicago & N.W. R.R. Co., 35 Wis. 426."

In the Hartung case the Supreme Court of Wisconsin declined to take original jurisdiction and dismissed the bill. Counsel for defendants confidently submit that similar action should be taken by this Honorable Court, in reference to the case at bar.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

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Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

In Equity.

THE STATE OF MISSOURI
COMPLAINANT,

vs.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
DEFENDANTS.

No. 5. Original.

Demurrer of Defendants to the Fourth Paragraph of the Supplemental Bill of Complaint,

and

Answer of Defendants to the parts of said Supplemental Bill to which a Demurrer has not been filed.

H. J. HAMLIN,
Attorney General of Illinois.
JAMES TODD,
P. C. HALEY,
Attorneys.
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Of Counsel for Sanitary District of Chicago.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1901.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

IN EQUITY.

THE STATE OF MISSOURI,
COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
DEFENDANTS.

No. 5.
Original.

The Joint Demurrer of the Defendants to so much of the Supplemental Bill of Complaint as is embraced in the fourth paragraph thereof.

Now come the State of Illinois, by Howland J. Hamlin, its Attorney General, and The Sanitary District of Chicago, by James Todd and P. C. Haley, its attorneys, and, as to so much of the said supplemental bill of complaint as is set forth in the fourth paragraph of said supplemental bill, in the words and figures as follows:

"And your orator further shows, and represents that whereas under the act of the General Assembly of the

State of Illinois authorizing the construction and operation of said channel, it was required that said sewage and filth be diluted with not less than 20,000 cubic feet of water per minute for each 100,000 inhabitants of said Sanitary District, the defendant, The Sanitary District of Chicago, has not at any time since the opening and operation of said channel furnished such an amount of water dilution; and that since the 20th day of April, 1901, said defendant, acting under orders of the Secretary of War, has reduced such dilution to not exceeding 200,000 cubic feet of water per minute in the aggregate, or about 10,000 cubic feet for each 100,000 inhabitants of its district, and proposes hereafter to limit the maximum dilution to that amount."

Which said paragraph seeks that these defendants may answer and set forth whether the defendant, The Sanitary District of Chicago, since the opening and operation of said channel, has furnished an amount of water dilution equal to 20,000 cubic feet per minute for each 100,000 inhabitants of said Sanitary District; and whether since the said 20th day of April, 1901, the said Sanitary District, acting under orders of the Secretary of War, has reduced such dilution to not exceeding 200,000 cubic feet per minute, or to about 10,000 cubic feet for each 100,000 inhabitants in said Sanitary District, and whether the said defendant, The Sanitary District of Chicago, proposes hereafter to limit the maximum dilution to that amount,—

Said defendants doth demur and for cause of demurrer saith that, whether the said Sanitary District of Chicago has or has not complied with the law of the State of Illinois in reference to the amount of water which should be required to flow through the channel of said canal, is a matter which does not concern said complainant; that it, the said Sanitary District of Chicago, is alone accountable to the said State of Illinois for any alleged failure on

its part to comply with the provisions of its organic act; that the alleged ultimate object sought by the original bill of complaint and the supplemental bill of complaint filed in this cause, is the prevention of the pollution of the Mississippi river, where the same flows along the banks of the said State, the complainant, and that whether said pollution is caused by a large discharge in the channel of said Sanitary District of Chicago, or a small discharge of water and sewage into said channel, cannot affect the principal question in the case, which is, whether or not the waters of the said Mississippi river, where the same flow along the banks of the said State, the complainant, are polluted, to the injury and detriment of the said complainant and the health of its people, so as to render said waters unfit for agricultural, domestic and manufacturing purposes, as alleged in said supplemental bill of complaint.

Wherefore, and for divers other errors and imperfections appearing in the said bill, the said defendants humbly pray the judgment of this honorable court, whether they shall be compelled to make any answer to such part of the said supplemental bill as is so demurred unto as aforesaid. And the said defendants humbly pray to be hence dismissed as to such part of said bill with their costs in this behalf most wrongfully sustained.

THE STATE OF ILLINOIS,
By H. J. HAMLIN,
Attorney General of the State of Illinois.
JAMES TODD,
P. C. HALEY,
Attorneys for the Sanitary District of Chicago.

JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Of Counsel.

I, William M. Springer, of counsel for said defendants, do certify that the above demurrer, is, in my opinion, well founded in point of law.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

I, William M. Springer, of counsel for said defendants, upon my oath do say that the above demurrer is not interposed for delay.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

Subscribed and sworn to before me this 10th day of May, 1901.

[L. S.]

R. B. H. LYON,
Notary Public.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

IN EQUITY.

THE STATE OF MISSOURI, COMPLAINANT, *v.* THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.	*No. 5. Original.*

The Answer of the Defendants to the Parts of the Supplemental Bill of Complaint to which a Demurrer has not been Filed.

Now come the defendants in the above-entitled cause, not waiving their said demurrer, but relying thereon and saving and reserving unto themselves all benefit and advantage of exception to the many errors, uncertainties, and imperfections in the residue of said supplemental bill contained, for answer to so much of the supplemental bill of complaint as they are advised is material and necessary for said defendants to answer unto, do say:

That they deny that heretofore, to wit, on the 17th day of January, 1900, the said complainant filed in this honorable court, its original bill of complaint against said defendants; but defendants allege and the records of this court will show that on said 17th day of January, complainant moved the court for leave to file its said bill of complaint herein, and that said motion was not allowed by this court until five days thereafter, when said bill of complaint was filed in this court.

Defendants admit that said original bill of complaint contained the several allegations as alleged in complainant's supplemental bill of complaint, and defendants further admit that they were duly served with subpœnas issued out of this court, and did appear and file their demurrer to said original bill, and that said demurrer was by this court overruled on the said 28th day of January, 1901, and that thereupon defendants filed their separate answers herein to said original bill of complaint. Defendants further admit that, on the said 17th day of January, 1900, which was five days before said complainant's original bill of complaint was filed in this court, the defendant, The Sanitary District of Chicago, did proceed to open said channel or canal, and did permit and cause the sewage of the said Sanitary District of Chicago to flow therein, as stated in said defendant's separate answer heretofore filed in this cause.

But defendants deny that said sewage, so permitted to flow into the Des Plaines and Illinois rivers, has polluted the waters of the Mississippi river along the borders of the State of Missouri, and defendants deny that said sewage has destroyed the value of the waters in said river for primary uses, and for agricultural, manufacturing, drinking, and domestic purposes, and defendants deny that said sewage, so permitted to flow into the Des Plaines

and Illinois rivers, has heretofore caused sickness to persons living along the banks of said Mississippi river, in the State of Missouri, or that it will hereafter cause sickness to any such persons; but, on the contrary, defendants expressly aver, and, if permitted, will prove to this honorable court, that the turning into the Des Plaines river of the sewage of the Sanitary District of Chicago, together with the pure waters of Lake Michigan, which accompany the same, has not polluted or in any way impaired the value of the waters of the Mississippi river for primary uses, or for agricultural, domestic, or manufacturing purposes, or in any manner injured the health of the inhabitants of complainant living on the banks of said river; but defendants aver that the large volume of pure water, which accompanies said sewage when it enters into the Des Plaines river, has improved the quality of the waters of the Illinois and Mississippi rivers, and also greatly improve the conditions which existed prior to the time when said sewage and waters were turned into said Des Plaines and Illinois rivers, as is fully explained in the separate answer of the defendant, The Sanitary District of Chicago, to the original bill of complaint filed herein, which said separate answer said defendants pray this honorable court to take and consider as their answer, not only to the original bill of complaint, but also in part to the supplemental bill filed herein.

And said defendants, further answering said bill of complaint and said supplemental bill, say: That the said city of St. Louis, situated about forty miles below the mouth of the said Illinois river, on the west bank of the said Mississippi river, in the State of complainant, having a population of 575,238 inhabitants by the Federal census of 1900, and surburban towns and villages, having a population of 50,000 in addition thereto, discharge their sew-

age and filth into the said Mississippi river opposite said city; that said sewage and filth, coming directly and undefecated from the sewers of said city, towns, and villages, cause a much greater pollution of the waters of said river from said city to the southern boundary of said State than can possibly be produced by the waters coming from the said Illinois river, which waters have flown in their natural course for about three hundred and fifty-eight miles, after having received the sewage from the Sanitary District of Chicago; that said waters, so flowing for said distance in their natural course, have been relieved of their noxious character by the natural law relating to sewage and drainage and to running waters in large bodies, as fully explained and set forth in the separate answer of the Sanitary District of Chicago to the original bill of complaint in this cause; and that if it should appear that the waters of the said Mississippi river below the said city of St. Louis have been polluted or their value impaired for primary uses or for agricultural, domestic, and manufacturing purposes, or so polluted as to injure the health or endanger the lives of the inhabitants of said State, such pollution, impairment of value and unhealthful conditions cannot be imputed to the defendants in this cause, but, on the contrary, they must be imputed to the said city of St. Louis, a municipality in the State of complainant, and to its suburban villages and towns, whose aggregate population is over 625,000, or about one-half of the population of the drainage district of the Sanitary District of Chicago, whose sewage is now drained into the said Des Plaines and Illinois rivers.

And defendants, further answering said bill of complaint and said supplemental bill, say: That the intake of the water works and water supply of the said city of St. Louis is located on the west bank of said Mississippi river only about three miles below the mouth of the Missouri river,

which river is nearly as large as the Mississippi river at the point of confluence; that the waters of the Missouri river flow in an easterly direction and bear directly across the said Mississippi river towards the Illinois shore, pressing upon that shore the water flowing from the Mississippi and Illinois rivers; that by this natural flow of the waters of all said rivers, the waters flowing from the Illinois river are pressed upon the east bank of the Mississippi river and do not mix with the waters flowing along the west bank of said Mississippi river until said waters have passed the intake of the water supply of the said city of St. Louis; that the waters received at the intake of said water supply of said city of St. Louis flow wholly from the Missouri river; that if said waters, so furnishing the water supply of said city, are polluted to any extent whatever, such pollution is caused by the sewage and filth from the cities and towns on the banks of said Missouri river above its mouth, many of which cities and towns are situated in the State of complainant.

And defendants further answering the said bill of complaint and said supplemental bill, say: That the Mississippi river, at the mouth of the Illinois river, is a much larger stream than is the Illinois river; that the flow of water from said Mississippi river at that point exceeds the flow from said Illinois river, under normal conditions, at low water stage, about six times in quantity, even since the increased flow from the waters of Lake Michigan; that in consequence of this fact, the waters flowing from said Illinois river are pressed upon the Illinois shore, until said waters have passed the mouth of said Missouri river, and that at no point in said Mississippi river, below the mouth of said Illinois river and above the city of St. Louis, do the waters of said Illinois river reach a line west of the center of said Mississippi river, which

is the boundary line between the said State of Missouri and State of Illinois.

And defendants, as to all the matters and things charged in complainant's supplemental bill of complaint, expressly reiterate all allegations contained in their separate answers to the original bill of complaint filed herein, which may be applicable thereto. And defendants say that they have not, in and by the operation of the said system of sewage and drainage, as fully explained in their separate answers to the original bill of complaint, contaminated, polluted, or destroyed the water supply from the said Mississippi river and its tributaries, to the inhabitants, cities, and towns, of the State of complainant, or injured the health of said inhabitants as in and by the original bill of complaint and said supplemental bill declared.

And, further answering, defendants deny each and every other allegation of said supplemental bill of complaint, not herein and hereby admitted, traversed, confessed or denied, and every matter, cause, or thing in said supplemental bill contained, material or necessary for defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied. And said defendants are ready and willing to prove every allegation in this answer contained as this court may direct, and pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

THE STATE OF ILLINOIS,
By H. J. HAMLIN,
Attorney General of the State of Illinois.
JAMES TODD AND
P. C. HALEY,
Attorneys.

JOHN G. DRENNAN, AND
WILLIAM M. SPRINGER,
Of Counsel for the Sanitary District of Chicago.